**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.M.JOSEPH**

**TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929**

**WP(C).No. 11040 of 2006(L)**
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**PETITIONER:**
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**P.K.SULOCHANA, AGED 46 YEARS,**
**HEADMISTRESS (UNAPPROVED), THERUR U.P.SCHOOL,**
**P.O.ELAMBRA, KANNUR DISTRICT.**

**BY ADV. SRI.M.V.AMARESAN**
**SRI.V.N.RAMESAN NAMBISAN**

**RESPONDENTS:**
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**1. THE ASSISTANT EDUCATIONAL OFFICER,**
**MATTANNUR, KANNUR DISTRICT.**

**2. DISTRICT EDUCATIONAL OFFICER,**
**THALASSERRY.**

**3. V.R.BHASKARAN, KEEZHALLUR AMSOM,**
**ELAMBRA DESOM, P.O.ELAMBRA, KANNUR DISTRICT.**

**4. AMERI PADMANABHAN, SECRETARY,**
**THERUR EDUCATIONAL SOCIETY, THERUR,**
**RESIDING AT PADMALAYAM, P.O.EDAYANNUR,**
**KANNUR DISTRICT.**

**BY ADV. SRI.R.VINOD**
**SRI.K.V.PAVITHRAN**
**SRI.JAYANANDAN MADAYI PUTHIYAVEETTIL**
**GOVERNMENT PLEADER, SRI.K.J.VARGHESE**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/03/2007, THE COURT ON 05/06/2007 DELIVERED THE FOLLOWING:**

**APPENDIX**

**PETITIONER'S EXIBITS:**

**EXT. P1:** COPY OF THE ORDER DATED 7-5-05 ISSUED BY THE 1ST RESPONDENT.

**EXT. P2:** COPY OF THE ORDER DATED 16-1-2005 ISSUED BY THE 2ND RESPONDENT.

**RESPONDENT'S EXHIBITS:**

**EXT. R4(A):** COPY OF THE ORDER NO.K.DIS/5497/04/G4/DPI DATED 27/9/2005 ISSUED BY THE DIRECTOR PUBLIC INSTRUCTIONS.

**EXT. R4(B):** COPY OF THE LETTER DATED 21/12/2005 SENT BY THE 4TH RESPONDENT TO THE 1ST RESPONDENT.

**EXT. R4(C):** COPY OF THE JUDGMENT DATED 30/3/2005 IN WP(C) NO.19337/04 OF THIS HONOURABLE COURT.

**EXT. R4(D):** COPY OF THE INTERIM ORDER IN WP(C) NO.19337/2004 PASSED BY THIS HONOURABLE COURT.

/TRUE COPY/

P.A. TO JUDGE

jp

**K.M.JOSEPH, J.**

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WP.(C) No. 11040 OF 2006

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Dated this the 5th June, 2007

**JUDGMENT**

Complaint of the petitioner is that though petitioner was promoted as Headmistress and working from 1.4.2005, her appointment is not approved by the authorities on the basis of the dispute over management between the third respondent, who appointed her and the fourth respondent. It is stated that the petitioner, who is the senior qualified teacher and posted as Headmistress with effect from 1.4.2005 against the retirement vacancy. By Ext.P1, the AEO rejected the appointment referring to the dispute over the management. Reference is also made to W.P.(C) 1933 of 2004 between the third respondent and the fourth respondent. It is further stated that this court had stayed all appointments. Though matter was carried in appeal, it was seen rejected by Ext.P2. Reference is made therein also to the direction from this court already referred to in Ext.P1. It is the case of the petitioner that there is no basis for refusing approval. There is no rival claimant for that post, it is stated. It is further contended that

the approval was declined interpreting a totally different interim order dated 7.5.2005, which only prohibits fresh appointment in the School by the third respondent and nothing else. There was non application of mind, it is contended. The School cannot run without a Headmistress. The petitioner challenges Exts.P1 and P2 and seeks a mandamus to the first respondent to grant approval to the appointment.

2. The fourth respondent has filed a counter affidavit. Therein the fourth respondent would, inter alia, state as follows:

The third respondent has no right to appoint or promote when the order of the AEO dated 29.5.2004 was set aside by the DPI by Ext.R4 (a). Ext.R4(a) is the order of the Additional DPI, by which the approval given by the AEO to the third respondent as Manager of the School is set aside and the AEO was further directed to approve the fourth respondent as Manager with effect from 30.9.2003 till a valid election is conducted. Ext.R4(b) is a letter by the fourth respondent seeking to approve him as Manager of the School. Ext.R4(c) is the judgment of this court pursuant to which Ext.R4(a) was passed. It is stated that there is an interim order to the first respondent not to

approve the appointments made by the third respondent without obtaining orders from the court. Ext.R4(d) is the said interim order. The appointment or promotion of the petitioner by the third respondent is illegal and Exts.P1 and P2 are not illegal. It is stated that the third respondent was not even in charge of the Manager. Reference is made to civil litigations between the parties. It is stated that as per the direction of the court the first respondent AEO is charge of UP School functions.

3. The DEO, 2nd respondent, has filed a counter affidavit. It is admitted that the petitioner is the eligible person to hold the post of Headmistress in the School. It is due to the interim order in W.P.(C) 19337 OF 2004 that approval was not given is the case of the second respondent. It is pointed out that Ext.R4(a) is pending consideration in a revision, which is yet to be disposed of. The order of the DPI was directed to be kept in abeyance till the revision was disposed of. It is stated that at the time of rejecting the claim, W.P.(C) 19337 of 2004 is pending and therefore the action of the DEO is correct and ultimate. It is stated that the second respondent is helpless to approve the

appointment of the petitioner. It is specifically stated that the petitioner is fully qualified for the post and there is reference to the battle between the third respondent and the fourth respondent. It is stated that after the interim stay of the order of the DPI, the third respondent again submitted petitioner's appointment for approval. It was rejected stating that the management dispute is pending. It is also stated that without an approved Headmistress the administrative work of the School cannot go smoothly and that the unapproved Headmistress and the subordinate staff are facing much hardship.

4. The petitioner was appointed as Headmistress by the third respondent against a retirement vacancy of HM which arose on 1.4.2005. The third respondent was approved as the Manager by Order dated 29.5.2004 by the AEO. Ext.P1 is dated 7.5.2005. This shows that the appointment of the petitioner was made prior to the Order passed by the Additional Director of Public Instruction dated 27.9.2005 whereunder the Order of the AEO approving the third respondent as Manager stood set aside. Thus, the appointment of the petitioner was made at a time when the third respondent was acting as the approved

Manager. Going by the stand taken by the DEO in the Counter Affidavit wherein it is stated that the petitioner is fully qualified for the post of Headmistress and none is looking for the post and further that the petitioner is the eligible person to hold the post of Headmistress in the School, it is clear that there exists a vacancy of HM and the petitioner is the eligible person to be appointed to the post of HM. I would think that Ext.R4(d) interim order should be understood as a mandate against granting approval for fresh appointments and it would not cover the appointment of the petitioner as Headmistress. In such circumstances, the petitioner is entitled to succeed. Exts.P1 and P2 are quashed and there will be a direction to the first respondent to grant approval of the appointment of petitioner as Headmistress in the Therur U.P. School. Appropriate orders in this regard shall be passed by the first respondent within a period of three weeks from the date of receipt of a copy of this Judgment.

**(K.M. JOSEPH, JUDGE)**

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K.M.JOSEPH, JJ.

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W.A. No. OF

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**JUDGMENT**

Dated this the day of February, 2006.